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8	BEFORE THE BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA									
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11	In the Matter of the Accusation Against: Case No. PT-2010-3722									
12	JAMES DWIGHT MOORE P.O. Box 201									
13	Eldridge, CA 95431 A C C U S A T I O N									
14	Psychiatric Technician License No. PT 12154									
15	Respondent.									
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18	Complainant alleges:									
19	PARTIES PARTIES									
20	1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in	ı								
21	her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric									
22	Technicians, Department of Consumer Affairs.									
23	2. On or about September 24, 1970, the Board of Vocational Nursing and Psychiatric									
24	Technicians issued Psychiatric Technician License Number PT 12154 to James Dwight Moore									
25	(Respondent). The Psychiatric Technician License was in full force and effect at all times									
26	relevant to the charges brought in this Accusation and will expire on September 30, 2013, unless									
27	renewed.									
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JURISDICTION

- 3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.
- 4. Section 4520 of the Code states, "[e]very licensed psychiatric technician under this chapter may be disciplined as provided in this article. The disciplinary proceedings shall be conducted by the board in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code."
- 5. Section 118, subdivision (b), of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.
- 6. Section 4545 of the Code provides that the Board may renew an expired license at any time within four years after the expiration.

STATUTORY/REGULATORY PROVISIONS

7. Section 4521 of the Code states, in pertinent part:

"The board may suspend or revoke a license issued under this chapter [the Psychiatric Technicians Law (Bus. & Prof Code, 4500, et seq.)] for any of the following reasons:

- "(a) Unprofessional conduct, which includes but is not limited to any of the following:
- "(5) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that the use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.
- "(6) Be convicted of a criminal offense involving the falsification of records concerning prescription, possession, or consumption of any of the substances described in paragraphs (4) and (5), in which event the record of the conviction is conclusive evidence of the conviction. The

board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline.

"(f) Conviction of any offense substantially related to the qualifications, functions, and duties of a psychiatric technician, in which event the record of the conviction shall be conclusive evidence of the conviction. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline."

- 8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of a licensed psychiatric technician.
 - 9. California Code of Regulations, title 16, section 2576.6 states, in pertinent part:
- "(b) A licensed psychiatric technician shall adhere to standards of the profession and shall incorporate ethical and behavioral standards of professional practice which include but are not limited to the following:
 - "(4) Abstaining from chemical/substance abuse; and
- "(c) A violation of this section constitutes unprofessional conduct for purposes of initiating disciplinary action."
 - 10. California Code of Regulations, title 16, section 2578, states, in pertinent part:

"For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensed psychiatric technician if to a substantial degree it evidences present or potential unfitness of a licensed psychiatric technician to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare. . . ."

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COST RECOVERY

11. Section 125.3 of the Code provides, in pertinent part, that a Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINARY ACTION

(Substantially Related Conviction) (Bus. & Prof. Code §§ 490 and 4521, subd. (f))

- Respondent has subjected his Psychiatric Technician License to disciplinary action 12. under Code sections 490 and 4521, subdivision (f), in that he was convicted of a crime substantially related to the qualifications, functions, or duties of a psychiatric technician. Specifically, on or about May 12, 2011, in Superior Court of California, County of Napa, Case Number CR156473, entitled The People of the State of California vs. James Dwight Moore, Respondent was convicted by his plea of nolo contendere of violating Vehicle Code section 23152, subdivision (b), (driving with a blood alcohol content of .08% or higher), a misdemeanor. Respondent admitted the enhancements of driving with a blood alcohol content of .15% or higher, and of being convicted within 10 years of the commission of the offense of violating Vehicle Code section 23152, subdivision (a), (driving under the influence of alcohol). The imposition of sentence was suspended and Respondent was placed on formal probation for 3 years, upon terms and conditions, which included, but were not limited to, the following: serve 20 days in jail with credit for time served of 11 days; pay a fine of \$3,334; install an ignition interlock in his vehicle for 1 year; enroll in, pay for, and successfully complete an outpatient or residential program if required by the probation officer; do not drink or possess alcoholic beverages; and submit to a blood, breath, or urine test if requested by any law enforcement or probation officer. The factual circumstances of the conviction are as follows:
- a. On March 1, 2011, in Napa County, a California Highway Patrol (CHP) officer pulled over Respondent, who was driving the subject vehicle, a red Chrysler sedan (SV), which was weaving slowly within a freeway lane, then drifting slowly within that lane, and traveling at approximately 40 mph in a 55 mph zone. The CHP officer contacted Respondent through the

SV's front passenger side window and detected the odor of an alcoholic beverage coming from within the vehicle. The CHP officer noticed that Respondent's eyes were red/watery and his speech was slurred and delayed. Respondent admitted that he drank two glasses of wine at his home and also took his anti-depressant pill at around 6:00 p.m. Respondent failed to complete the field sobriety tests, as instructed and demonstrated. Based on the CHP officer's observations of Respondent's driving, his objective signs of intoxication, and his poor performance of the field sobriety tests, the CHP officer determined that Respondent was driving under the influence of an alcoholic beverage and/or drugs and could not safely operate a motor vehicle. Respondent was arrested for driving under the influence. Respondent elected to take a chemical blood test, which showed that his blood alcohol content was .18 percent.

SECOND CAUSE FOR DISCIPLINARY ACTION

((Unprofessional Conduct - Used Alcohol to a Dangerous Extent) (Bus. & Prof. Code §4521. subd. (a)(5))

- 13. The allegations of paragraph 12 are realleged and incorporated by reference as if fully set forth.
- 14. Respondent has subjected his Psychiatric Technician License to disciplinary action under section 4521, subdivision (a)(5), of the Code on the grounds of unprofessional conduct in that on or about March 1, 2011, Respondent used alcohol to an extent or in a manner dangerous or injurious to himself, or the public, as set forth in paragraph 12, above.

THIRD CAUSE FOR DISCIPLINARY ACTION

(Unprofessional Conduct - Conviction Involving Controlled Substance) (Bus. & Prof. Code §4521. subd. (a)(6))

- 15. The allegations of paragraph 12 are realleged and incorporated by reference as if fully set forth.
- 16. Respondent has subjected his Psychiatric Technician License to disciplinary action under section 4521, subdivision (a)(6), of the Code on the grounds of unprofessional conduct, in that on or about May 12, 2011, Respondent was convicted of a crime involving the consumption of alcohol, as set forth in paragraph 12, above.

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MATTERS IN AGGRAVATION

- 17. To determine the degree of penalty to be imposed on Respondent, if any, Complainant makes the following allegations:
- 18. On or about December 1, 2005, in the Superior Court of California, County of Sonoma, Case Number SCR-473297, entitled *The People of the State of California v. James Dwight Moore*, Respondent was convicted by his plea of guilty of violating Vehicle Code section 23152, subdivision (a), (driving while under the influence of alcohol), a misdemeanor. The imposition of sentence was suspended and Respondent was placed on probation for 36 months upon terms and conditions, which included, but were not limited to, the following: obey all laws; serve 2 days in jail, with credit for time served of 1 day; submit to random chemical tests; do not drive with any alcohol in system; enroll within 21 days in First Offender Drinking Driver Program and complete as directed; and pay a fine of \$1,790. The factual circumstances of the conviction are as follows:
- a. On September 16, 2005, a Sonoma County Sheriff's Office (SCSO) deputy pulled over Respondent, who was driving a red Chrysler sedan, which drove approximately 3 feet across the center dividing lane into the SCSO deputy's lane of traffic. The deputy was forced to swerve from the Chrysler sedan's path to avoid colliding with it. Once contacted, the deputy detected a strong odor of an alcoholic beverage coming from Respondent's person, and that his eyes were red, bloodshot and watery. Respondent stated that he had consumed "too much to be talking to you (the police)." Respondent's speech was heavily slurred and his responses to the deputy's questions were slow and deliberate. The deputy asked Respondent to step out of his vehicle. As Respondent stepped out of his vehicle, the deputy noticed that Respondent was very unsteady on his feet, almost fell over, and was forced to lean on the vehicle to keep his balance. Respondent performed poorly on the field sobriety tests (FSTs) given by the deputy. Based on the deputy's observations of Respondent's intoxication and his inability to successfully complete the FSTs, the deputy determined that Respondent was driving under the influence of alcohol and arrested him. Respondent refused to complete an alcohol screening test.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians issue a decision:

- 1. Revoking or suspending Psychiatric Technician License Number PT 12154, issued to James Dwight Moore;
- 2. Ordering James Dwight Moore to pay the Board of Vocational Nursing and Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
 - 3. Taking such other and further action as deemed necessary and proper.

DATED:	APR	0	8	2013	(How Sele	, John
					TERESA BELLOSIONES LD	MSN/R

Executive Officer
Board of Vocational Nursing and Psychiatric Technicians

Department of Consumer Affairs

State of California Complainant

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